

E-FILED 07-08-2010

(Counsel Listed on Signature Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEDIMMUNE, LLC,

Plaintiff,

v.

PDL BIOPHARMA, INC.,

Defendant.

Case No. CV 08 5590 JF

Action Filed: December 16, 2008

**STIPULATION AND ~~PROPOSED~~
ORDER MODIFYING PROTECTIVE
ORDER**

Honorable Howard R. Lloyd

A. Whereas Defendant PDL BioPharma, Inc. (“PDL”) has served certain requests for production upon MedImmune, LLC (“MedImmune”) that call for the production of documents containing information covered by confidentiality agreements between MedImmune and certain third parties;

B. Whereas MedImmune has provided notice of the requests and a copy of the Protective Order (Docket No. 113) to the certain third parties;

C. Whereas certain third parties have objected to the production of documents pursuant to the current version of the Protective Order because the Protective Order permits employees within PDL to review even documents designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” see Section 7.3;

D. Whereas the Court has the authority to modify the protective order as requested, *see Brown Bag Software v. Symantec Corp.*, 960 F.2d 1365, 1370-71 (9th Cir. 1992); and

E. Whereas, in the interest of minimizing third-party motions practice, MedImmune and PDL have agreed to accommodate the requests of the certain third parties;

IT IS HEREBY STIPULATED AND AGREED by and between MedImmune and PDL as follows:

1. Section 2 of the Protective Order (Docket No. 113) is modified to add the following Section 2.4.1.

“THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” Information or Items: extremely sensitive “HIGHLY CONFIDENTIAL” information, the potential production of which has caused a third party to object to the disclosure of the information to another Party.

2. Sections 2.7, 2.8, 5.2(a), 5.2(b), 5.2(c), 5.3, 6.3, 8, and 12.4 are amended to add the phrase “or THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” after the phrase “‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.’”

3. Section 7 of the Protective Order is modified to add the following Section 7.6.
Disclosure of “THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY”

1.

Information of Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose the information or item designated “THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” only to:

- (a) the Receiving Party’s Outside Counsel;
- (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have been subject to section 7.4 above and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);
- (c) the Court and its personnel;
- (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; and
- (e) witnesses, to the extent provided in section 7.5.

4. Section 7.5 of the Protective Order (Docket No. 113) is amended to replace the final sentence with the following:

Protected Material may be disclosed to third-party fact witnesses during the course of a deposition only if the deponent is reasonably believed to be already familiar with such Protected Material, *except* that material designated “THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” may not be shown to third-party fact witnesses. To illustrate, a document produced by MedImmune and designated “THIRD-PARTY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” may not be shown to a fact witness currently employed by PDL during that witness’ deposition.

1 SO STIPULATED.

2 DATED: July 7, 2010.

WILLIAMS & CONNOLLY LLP

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4 /s/ Thomas S. Fletcher

GERSON A. ZWEIFACH
PAUL B. GAFFNEY
AARON P. MAURER
DAVID I. BERL
JESSAMYN S. BERNIKER
THOMAS S. FLETCHER

7
8 Attorneys for Plaintiff
MEDIMMUNE, LLC

9 DATED: July 7, 2010.

WEIL, GOTSHAL & MANGES LLP

11 /s/ Peter Sandel

MATTHEW D. POWERS
VERNON M. WINTERS
PETER SANDEL
REBECCA FETT
AARON Y. HUANG

15 Attorneys for Defendant
PDL BIOPHARMA, INC.

17 ~~PROPOSED~~ ORDER

19 Good cause appearing, IT IS SO ORDERED.

20 DATED: July 8, 2010.

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23 THE HONORABLE HOWARD R. LLOYD
24 UNITED STATES MAGISTRATE JUDGE

GENERAL ORDER ATTESTATION

I, Jeffrey E. Faucette, am the ECF user whose ID and password are being used to file the
Stipulation And [Proposed] Order Modifying Protective Order.

In compliance with General Order 45, X.B., I hereby attest that Thomas S. Fletcher and Peter
Sandel have concurred in this filing.

/s/
Jeffrey E. Faucette